

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD M. FLEMING,

Petitioner,

vs.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

3:10-cv-00362-ECR-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner is challenging his conviction of federal criminal charges that took place in the United States District Court for the District of Nebraska, Lincoln Division, with Judge Richard G. Kofp, presiding. On November 9, 2010, this Court transferred this action to the District of Nebraska, Lincoln Division, pursuant to 28 U.S.C. § 1631. (Docket #8). Petitioner has filed a motion asking this Court to reconsider the order transferring this action. (Docket #11).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:


(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999).

In his motion for reconsideration, petitioner has failed to make an adequate showing under either Rule 60(b) or 59(e) that this Court's order of transfer was erroneous or should be reversed.

IT IS THEREFORE ORDERED that petitioner's motion for reconsideration (Docket #11) is **DENIED**.

Dated this 15th day of November, 2010.


UNITED STATES DISTRICT JUDGE